Huck Store Fixture Company *and* Mid-Central Illinois District Council of Carpenters affiliated with United Brotherhood of Carpenters and Joiners of America, AFL–CIO. Case 14–CA–24484

May 29, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND TRUESDALE

On March 19, 1998, Administrative Law Judge Karl H. Buschmann issued the attached decision. The Respondent and the General Counsel filed exceptions and supporting briefs, the General Counsel filed an answering brief, and the Respondent filed a reply brief.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions[2] and briefs and has decided to affirm the judge's rulings, findings,[3] and conclusions as modified[4] and to adopt the recommended Order as modified and set forth in full below.[5]

1. We agree, for the reasons set forth by the judge, that the Respondent's decision in late February 1997[6] to reduce its work force by 20 percent, and its resulting layoffs and discharges of 33 employees in early March, were motivated by the union organizing activities of its employees and that the layoffs and discharges violated Section 8(a)(3) and (1) of the Act. The facts on which these findings are based, set forth more fully by the judge, are outlined as follows.

The Respondent manufactures and sells store display fixtures and related products. The Respondent's owner and president, Dennis Prock, announced to his assembled employees in mid-January that the Company's outlook was good for 1997 and that business had built up quicker than he had anticipated. In early February, a group of the Respondent's employees, meeting with a union business representative, formed an organizing committee and began distributing union authorization cards. On February 13, Prock called a meeting of all employees and, waving a union authorization card in his hand, told the employees that the Respondent was aware of the cards and was strongly opposed. He added that if anyone would like to ask for their cards back and tear them up they could have them. Beginning later that day and continuing for the rest of the month, the Respondent's supervisors committed a series of 8(a)(1) violations, as set forth by the judge, including interrogating employees about their union activities, threatening employees with discharge, plant closure, relocation, and other reprisals because of their union activities, creating the impression that the employees' union activities were under surveillance, engaging in surveillance of union activities, and circulating an antiunion petition and assisting in obtaining employees' signatures on the petition. Thereafter, between March 4 and 11, the Respondent laid off or discharged 33 of its employees.

[1] The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[2] No exceptions were filed to the judge's findings that the Respondent violated Sec. 8(a)(1) of the Act by Supervisor Trimpe's interrogation of employees about their union activities on February 13, 21, 26, and 28, 1997, his threatening employees with discharge on February 21 and 26, 1997, his creating the impression that employees' union activities were under surveillance on February 21, 1997, and his threatening employees with physical violence on February 28, 1997.

[3] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In adopting the judge's finding that the Respondent unlawfully engaged in surveillance of employees' union activities by Supervisors Gibbs' and Lockett's appearing at and attempting to gain admission to a union meeting, we note that the record shows that at least one employee attending the meeting saw Gibbs there and that Gibbs observed two employees arriving at the meeting.

In adopting the judge's finding that Supervisor Mock's questioning of employee Boone violated Sec. 8(a)(1), we find, contrary to the judge, that Mock's questions indicating that the Respondent knew about the union activities of two employees did not in themselves constitute surveillance. In agreement with the judge's Conclusion of Law 3(h), however, Members Truesdale and Liebman find that the questions unlawfully gave the impression that the employee's union activities were under surveillance. Chairman Hurtgen finds that the questions were coercive interrogations in violation of Sec. 8(a)(1) and finds it unnecessary to pass on the allegation of conveying the impression of surveillance, inasmuch as such additional violation would be cumulative and would not affect the remedy or Order.

We find merit in the Respondent's exception to the judge's finding, in sec. II of his decision, that the Respondent hired "many" of the employees who had been employed by the predecessor company when the Respondent began operations in November 1995. The Respondent hired only about 15 employees at that time, while the predecessor company had employed 150 to 200 employees. Our correction of this error, however, does not affect the legal conclusions reached by the judge.

[4] We correct the judge's inadvertent error in finding, in Conclusion of Law 3(f), that Supervisor Winking threatened employees with physical violence. As the judge correctly indicated in sec. III,A(M) of his decision and in Conclusion of Law 3(b), it was Supervisor Trimpe, not Winking, who threatened employees with physical violence. We further modify Conclusion of Law 3(f) to reflect the judge's finding, set forth in sec. III,A(C) of his decision, that Winking threatened employees with plant relocation on February 19. The judge's conclusions of law inadvertently omitted this finding.

[5] We have modified the notice posting and mailing provision of the recommended Order in accordance with our decision in *Excel Container, Inc.*, 325 NLRB 17 (1997).

[6] All dates are in 1997, unless otherwise indicated.

We agree that the General Counsel carried his *Wright Line*[7] burden of showing that the employees' protected activity was a motivating factor in the Respondent's decision to lay off or discharge these employees. Thus, the General Counsel established that employees engaged in union activity, that the Respondent had knowledge of that activity, and that the Respondent demonstrated union animus.[8] As the judge noted, the Respondent conceded that Prock learned on February 13 that authorization cards were being circulated among employees. Further, as the judge also noted, the evidence showed that the Respondent was aware that a union meeting was held on February 12 and that employees Steffen, Willis, Schieferdecker, Budde, and Stice served on the union organizing committee.[9] The judge found that strong antiunion animus was established by Prock's announcement to his assembled employees that he opposed the Union and by the numerous 8(a)(1) violations committed by the Respondent's supervisory hierarchy, including threats of plant closure and loss of jobs, coercive interrogations, and surveillance of employees' union activity. The judge further found that the timing of the discharges and layoffs soon after the Respondent became aware of the union drive also suggested an unlawful motive.

We further agree with the judge that the Respondent failed to carry its *Wright Line* burden of showing that it would have laid off and discharged the employees even in the absence of the protected union activity. The Respondent denies that the layoffs and discharges were instituted for antiunion reasons. Rather, it contends that information learned during meetings with its customers on February 18 and 19 led it to conclude that it needed to sharply reduce production and, therefore, to lay off and discharge employees. However, as the judge detailed, the Respondent's projection of orders following its February customer meetings varied little from those on which Prock's upbeat January announcement to employees was based. Even Prock admitted, as the judge noted, that the "difference between the first part of January and the end of February was not that significant." However, the action that the Respondent took purportedly due to this difference—the layoff or discharge of 33 employees constituting 20 percent of the Respondent's work force—was drastic. Thus, we agree with the judge that the Respondent's jettisoning of one-fifth of its work force was not plausibly explained by the small change in the Respondent's projected orders following its February customer meetings, and we concur in his rejection of this explanation.[10]

We also agree with the judge in rejecting the Respondent's additional contention that its reduction in force was due to the Respondent's purported exhaustion of its bank line of credit or its lack of cash. Three of the Respondent's officials, President Prock and Vice Presidents Ronald Hamann and Gene Soebbing, made the decision to institute the 20-percent reduction of the Respondent's work force at a meeting in February. In their testimony concerning this meeting, none of them mentioned exhaustion of the Respondent's line of credit or lack of cash as a reason for their decision. Moreover, while evidence was introduced to show that the Respondent at certain times was using all of its bank line of credit, there was no evidence that the Respondent requested the bank to increase its line of credit prior to the layoffs and discharges or sought at any time to obtain a line of credit from any other bank. Additionally, in its February 18 meeting with Domino's, one of the Respondent's principal customers, Domino's offered to pay the Respondent for approximately 100 stores' worth of Domino's fixtures that the Respondent was holding in stock. The Respondent, however, declined payment, saying that it was not necessary. If the Respondent truly had been concerned about its cash-flow position and the purported exhaustion of its line of credit in February, it is unlikely that the Respondent would have declined Domino's offer of payment for this substantial amount of inventory. Finally, as the judge noted and as we discuss below in section 5, the Respondent's grant of wage increases to approximately 30 employees on March 17 further belies its argument that it had a cash-flow problem that required a reduction in payroll.

Accordingly, we agree with the judge that the Respondent's explanations for its decision to layoff or discharge 20 percent of its work force are not supported by the record and are simply unconvincing. Thus, we agree with

[7] 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

[8] As the Board explained in *Regal Recycling, Inc.,* 329 NLRB 355, 356 (1999) (footnotes omitted):

> Under the test set out in *Wright Line*, in order to establish that the Respondent unlawfully discharged the . . . employees based on their union activity, the General Counsel must show by a preponderance of the evidence that the protected activity was a motivating factor in the Respondent's decision to discharge. Thus, the General Counsel must show that the employees engaged in union activity, that the Respondent had knowledge of that activity, and that the Respondent demonstrated antiunion animus. Once the General Counsel has made the required showing, the burden shifts to the Respondent to demonstrate that it would have taken the same action even in the absence of the protected union activity.

[9] The Respondent's knowledge of employees' union views and activities is further detailed in fn. 11, below.

[10] We find it unnecessary to rely on the judge's supplemental reasoning that, if the Respondent had really faced a business slowdown, it could have reduced the work hours of all its employees rather than conducting layoffs and discharges.

the judge that the Respondent failed to establish that employees Tom Boone, Owen Brown, Gary Chapman, James Ende, James Gallaher, Marty McClauhen, James Payne, Jerry Schieferdecker, Brandon Schroder, Wayne Steffen, Dennis Tarpein, Roger Willis, Quentin Brace, Dan Byington, James Cannon, Joe Chitwood, Kyle Daggett, Jack Doran, Greg Hultz, Crystal Jenkins, Wes Massengill, Daniel Werneth, John Boaerson, Robert Booher, Leonard Brooks, Ed Fruit, Jeremy Fruit, Sam Hutton, John Jacobs, Tom Killday, Tyson Mauck, Kevin McAffee, and Pierre Parrish would have been laid off or discharged in the absence of union activity. See *We Can, Inc*., 315 NLRB 170, 173 (1994) (finding employer's explanation for drivers' discharges highly implausible, Board found employer failed to show that it would have discharged drivers in the absence of union activity).

2. While the judge found that the Respondent's layoffs and discharges of 33 employees between March 4 and 11 violated Section 8(a)(3) and (1) of the Act, the General Counsel excepts to the judge's failure to find that the Respondent's adoption of a new attendance policy and its preparation of employee evaluations in late February and early March independently violated the Act. We find merit in these exceptions.

After deciding in February to reduce its work force by 20 percent, the Respondent conducted new evaluations of employees as part of its process of implementing this decision, even though it had evaluated all of its employees in November 1996, only 4 months earlier. In the new evaluations, supervisors graded employees on each of five criteria—attitude, absenteeism, work habits, quality of work, and knowledge. To grade absenteeism (also referred to as attendance), the Respondent devised a new, more stringent scoring system than it had previously used. As a result, many employees received much lower ratings for absenteeism in the new evaluations than they had received in their November 1996 evaluations.

As discussed above, the General Counsel demonstrated, under the *Wright Line* test, that the employees' protected union organizational activity was a motivating factor in the Respondent's decision to lay off and discharge employees, and the Respondent failed to show that it would have made the same decision in the absence of the protected union activity. The Respondent's February–March 1997 employee evaluations and adoption of a new absenteeism policy were undertaken expressly to carry out the Respondent's unlawful decision to lay off and discharge employees and would not have been undertaken but for this decision. Accordingly, we find that the Respondent's ad hoc evaluations and application of the new absenteeism policy violated Section 8(a)(3). See *Pace Industries*, 320 NLRB 661, 662 (1996), enfd. 118 F.3d 585 (8th Cir. 1997) (Sec. 8(a)(3) violated by employer's use of employment screening criteria to avoid successorship obligation, where screening criteria would not have been adopted except for the employees' union activities).

We further find that the evaluations were also unlawful because they were used to target union supporters for layoff or discharge. Because the evaluations employed subjective criteria, such as "attitude," they could be scored so as to obtain desired results. The Respondent knew which employees supported the Union and which did not. It had unlawfully assisted in the circulation of antiunion petitions among the employees.[11] The evaluations resulted in the Respondent's laying off or terminating 27 percent of the employees (21 out of 79) who had not signed the antiunion petitions but only 6 percent of the employees (5 out of 81) who had signed an antiunion

[11] The importance of the antiunion petitions, circulated February 26 and 27—after the Respondent decided to reduce its work force by 20 percent but before it imposed the layoffs and discharges—was reflected in the interest that the Respondent's supervisors and managers showed in assuring the petitions' successful circulation. Thus, when Supervisor Gibbs noticed that the circulating petition was missing, he contacted Production Coordinator Smith, and they jointly notified Vice President Soebbing. Smith and Soebbing then went to Supervisor Mock's department in search of the petition and found that it had been located. Supervisor Winking subsequently "kept an eye on" the petition as it circulated through his department. Winking noticed that the petition's circulation ceased when it reached employee Gallaher, who had put it in his toolbox. Winking insisted that Gallaher relinquish the petition, but Gallaher refused. Gallaher's sidetracking of the petition apparently was of great concern, as it prompted Winking to page Smith and Soebbing over the intercom. Smith and Soebbing went to Winking's office, and he informed them that Gallaher was holding the petition. A second antiunion petition thereafter circulated. When its circulation was completed, Supervisor Winking gave the petition to President Prock.

The antiunion petitions systematically provided knowledge of the employees' union sentiments to the Respondent. However, the Respondent also knew the identity of some union supporters through other means. For example, Supervisor Winking learned from employees that, in his department, employees Budde, Schieferdecker, Steffen, Stice, and Willis supported the Union, and he passed this information along to Production Coordinator Smith. Winking also discussed the identity of union supporters with Supervisors Gibbs, Mock, and Trimpe. Smith observed Budde and Willis distributing union authorization cards. Smith also testified that he knew employees' views supporting or opposing the Union because he was on the plant floor all day and heard all the comments. The Respondent also learned employees' union views through Winking's, Trimpe's, and Mock's unlawful interrogations of employees and through Supervisors Gibbs' and Lockett's observation of employees when they appeared at and attempted to enter a union meeting. Moreover, the questions that the supervisors asked in the interrogations often reflected prior knowledge of employees' union views.

petition.[12] Moreover, 5 of the 11 employees[13] who were discharged on March 4 had signed authorization cards and 10 of the 12 employees[14] laid off March 11 had signed authorization cards. Additionally, four of the seven members of the union organizing committee were among those laid off on March 11.[15] Accordingly, we find that the Respondent's conducting evaluations in February–March 1997 also violated Section 8(a)(3) and (1) on the basis that the evaluations were used to discriminate against employees because of their union activities. See *Federal Screw Works*, 310 NLRB 1131, 1141–1143 (1993) (employer unlawfully gave employees poor evaluations and discharged them because of union activities); see also *American Wire Products*, 313 NLRB 989, 994 (1994) (disproportion in union and nonunion employees laid off or discharged may be persuasive evidence of discrimination); *Baker Mfg. Co.*, 269 NLRB 794, 816 (1984), enfd. in relevant part 759 F.2d 1219 (5th Cir. 1985) (lopsided percentage favoring layoff or termination of union supporters is indicative of unlawful motivation); *Holding Co.*, 231 NLRB 383, 390 (1977) (disproportionate number of union adherents discharged is persuasive evidence of discrimination). [16]

3. We also find merit in the General Counsel's exception to the judge's failure to find that the Respondent's March 10 hiring of 10 employees violated Section 8(a)(3) and (1). As of February 28, the Respondent employed 26 temporary employees who it had obtained through Snelling Personnel Services, a personnel agency. Even though the Respondent had decided in February to reduce its work force by 20 percent, on March 10 it hired 10 of the Snelling employees as its own employees. The Respondent had already discharged 11 employees on March 4 and laid off 10 employees on March 7. Further, on March 11, the day after the Respondent hired the 10 Snelling employees, the Respondent unlawfully laid off an additional 12 of its own employees.[17] Thus, by hiring the 10 Snelling employees, the Respondent avoided a significant work force reduction while getting rid of many union supporters. Moreover, had the Respondent's decision to reduce its work force been lawfully motivated, it logically would have terminated all temporary employees so as to minimize the number of its own employees who would be terminated.[18] That the Respondent did not do so underscores its unlawful motive for its work force reduction.

As discussed above, the General Counsel demonstrated, under the *Wright Line* test, that the employees' protected union organizational activity was a motivating factor in the Respondent's decision to lay off and discharge employees, and the Respondent failed to show that it would have made the same decision in the absence of the protected union activity. The Respondent's hiring of the 10 Snelling employees on March 10 was an integral part of the Respondent's unlawful scheme to discharge and lay off employees who engaged in union activities. Moreover, the Respondent's hiring of the 10 Snelling employees would not have occurred but for the Respondent's decision to discharge and lay off other employees. Accordingly, we find that the Respondent's hiring of the 10 Snelling employees on March 10 violated Section 8(a)(3) and (1) the Act.

4. In his remedy, the judge ordered the Respondent to reinstate and make whole all 33 employees who it unlawfully laid off or discharged between March 4 and 11, including the 10 Snelling employees discharged March 7.

[12] These figures do not include seven temporary employees who were laid off or discharged because they had not worked at the Respondent's plant for 300 hours and thus were not eligible for hire. At the time of the layoffs and discharges, the Respondent was employing temporary employees through Snelling Personnel Services, a personnel agency. The Respondent converted some of the temporary employees to be directly employed by the Respondent, and it terminated the remaining temporary employees. Under its agreement with Snelling, the Respondent could not hire as its own employee any temporary employee who had worked fewer than 300 hours.

[13] Employees Brooks, Jeremy Fruit, William Fruit, Hutton, and Parrish had signed authorization cards.

[14] Employees Boone, Brown, Chapman, Gallaher, McGlauchlen, Payne, Schieferdecker, Tarpein, and Willis had signed authorization cards.

[15] As the judge found, the members of the organizing committee were employees Brown, Budde, Schieferdecker, Steffen, Stice, Vandermaiden, and Willis. Brown, Schieferdecker, Steffen, and Willis were included in the March 11 layoff. The record does not support the Respondent's contention that the organizing committee had a different composition that which the judge found.

[16] Chairman Hurtgen agrees with his colleagues that the Respondent's preparation of evaluations prior to the unlawful layoff and discharge of employees violated Sec. 8(a)(3) and (1) because they were undertaken to carry out the Respondent's unlawful decisions to lay off and discharge these employees and would not have been undertaken but for those decisions. He therefore finds it unnecessary to pass on whether the evaluation procedure violated the Act on the additional basis that it allegedly disproportionately affected union supporters.

[17] As noted above, of the 12 employees laid off March 11, 10 had signed union authorization cards and 4 were members of the organizing committee.

[18] The Respondent contends that it hired some of the Snelling employees while terminating its own employees simply because it wished to retain the most qualified employees. However, the Respondent previously had hired 11 Snelling employees as the Respondent's own employees in December 1996. In doing so, the Respondent selected the best qualified of the Snelling employees who had worked at its facility at least 300 hours. Snelling subsequently sent the Respondent additional new temporary employees in January and February. Thus, when the Respondent hired 10 additional Snelling employees as its own permanent employees on March 10, the only Snelling employees available were ones who had been passed over for hire as permanent employees in December 1996 or had been working at the Respondent's facility only a short period of time.

The Respondent excepts, contending that the judge erred in extending this remedy to the employees of Snelling Personnel Services, who were working at the Respondent's facility as temporary employees. We agree, in part, with the Respondent's exception.

The appropriate remedy here is governed by *Vemco, Inc*., 314 NLRB 1235 (1994). In that case, the employer unlawfully discharged certain of its own employees as well as temporary employees supplied by a labor contractor. While the Board ordered the employer to make whole all the unlawfully discharged employees, it ordered the employer to reinstate only its own employees. As to the temporary employees, the Board ordered the employer to notify the labor contractor that it had no objection to their employment at the plant. Id. at 1242.

In accord with this precedent, we shall modify the judge's remedy to omit the requirement that the Respondent reinstate employees of Snelling Personnel Services, but we shall order the Respondent to notify Snelling Personnel Services that it has no objection to employees Quentin Brace, Dan Byington, James Cannon, Joe Chitwood, Kyle Daggett, Jack Doran, Greg Hultz, Crystal Jenkins, Wes Massengill, and Daniel Werneth being employed at the Respondent's facility. The appropriate termination date for the make-whole remedy for the unlawfully discharged Snelling Personnel Services employees shall be determined in compliance proceedings.

5. We adopt the judge's finding that the Respondent's granting of wage increases violated Section 8(a)(3) and (1). Employees' dissatisfaction with wages was a principal issue in the union organizing effort. On February 13, the day on which Prock informed the employees that he was aware that union authorization cards were being circulated and that he strongly opposed the Union, Prock also held a meeting with his supervisors. At the supervisory meeting, Prock asked if employees had revealed why they wanted a union, and one or more of the supervisors responded that employees had expressed dissatisfaction with low wages.[19] Thereafter, on March 17, the Respondent granted wage increases to the approximately 30 employees whose hourly rate was less than $8. These wage increases followed closely on the heels of the Respondent's unlawful layoffs and discharges of March 4, 7, and 11.

The Respondent contends that these wage increases were based on length of service and established pay scales, but the record does not support this contention. The Respondent's only evidence concerning what prompted the wage increases was the testimony of Vice President Soebbing. When asked why the wage increases were given right after the layoffs, Soebbing stated that Vice President Hamann and Production Coordinator Smith had come to him and said that the Respondent had a number of employees who had been there for a long time and were earning $7 or 7.50 per hour and Hamann and Smith wanted to move these employees up to a minimum of $8 and "that's what we did." Wage increases had been given only 4 months earlier, in November 1996. Thus, the Respondent's testimony shows that the March 17 wage increases were given on an ad hoc basis rather than on the basis of any predetermined schedule and that the wage increases had not been planned before the Respondent became aware of its employees' union activity and the role that the employees' dissatisfaction with low wages played in that activity. Consequently, under these circumstances, and given the wage increases' close proximity to the unlawful March layoffs and discharges, we agree with the judge that the March 17 wage increases violated Section 8(a)(3) and (1) of the Act, as we find that they were motivated by the Respondent's desire to discourage the employees' union activities and would not have been made in the absence of such activities. See *NLRB v. Exchange Parts Co*., 375 U.S. 405, 409 (1964) (Sec. 8(a)(1) "prohibits not only intrusive threats and promises but also conduct immediately favorable to employees which is undertaken with the express purpose of impinging upon their freedom of choice for or against unionization and is reasonably calculated to have that effect"); *Holly Farms Corp*., 311 NLRB 273, 274 (1993), enfd. 48 F.3d 1360 (4th Cir. 1995), affd. 517 U.S. 392 (1996) (inference of improper motivation and interference with employee free choice drawn from evidence and "failure to establish a legitimate reason for the timing of the increase").

[19] These facts are established by the uncontroverted testimony of two supervisors present at the meeting, Vice President Soebbing and Production Coordinator Smith.

ORDER

The National Labor Relations Board orders that the Respondent, Huck Store Fixture Company, Quincy, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating employees about their union activities, sympathies, and the union activities of other employees.

(b) Threatening employees with discharge, loss of jobs, physical violence, and unspecified reprisals because of the employees' union activities.

(c) Threatening employees with plant closure or plant relocation because of their union activities.

(d) Creating the impression that employees' union activities are under surveillance and engaging in surveillance of employees' union activities.

(e) Telling employees to find another job if they support the Union and telling employees that they must obtain permission from management to engage in union activities.

(f) Circulating and assisting in obtaining signatures on antiunion petitions.

(g) Maintaining rules that prohibit solicitation by employees on nonworktime and prohibit distribution of literature by employees on nonworktime and in nonwork areas of its facility.

(h) Discharging, laying off, and reassigning employees because of the employees union activities.

(i) Granting pay raises to employees in order to discourage union activities.

(j) Conducting new employee evaluations and adopting a new attendance policy in order to unlawfully discharge and lay off employees.

(k) Hiring new permanent employees in order to unlawfully discharge or lay off other employees.

(l) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Tom Boone, Owen Brown, Gary Chapman, James Ende, James Gallaher, Marty McClauhen, James Payne, Jerry Schieferdecker, Brandon Schroder, Wayne Steffen, Dennis Tarpein, Roger Willis, John Boaerson, Robert Booher, Leonard Brooks, Ed Fruit, Jeremy Fruit, Sam Hutton, John Jacobs, Tom Killday, Tyson Mauck, Kevin McAffee, and Pierre Parrish full reinstatement to their former jobs or, if these jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make whole Tom Boone, Owen Brown, Gary Chapman, James Ende, James Gallaher, Marty McClauhen, James Payne, Jerry Schieferdecker, Brandon Schroder, Wayne Steffen, Dennis Tarpein, Roger Willis, John Boaerson, Robert Booher, Leonard Brooks, Ed Fruit, Jeremy Fruit, Sam Hutton, John Jacobs, Tom Killday, Tyson Mauck, Kevin McAffee, and Pierre Parrish for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the judge's decision.

(c) Make whole Quentin Brace, Dan Byington, James Cannon, Joe Chitwood, Kyle Daggett, Jack Doran, Greg Hultz, Crystal Jenkins, Wes Massengill, and Daniel Werneth, for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the judge's decision, provided, however, that termination dates of their respective backpay periods shall be determined in compliance proceedings.

(d) Notify Snelling Personnel Services that it has no objection to Snelling Personnel Services' referring Quentin Brace, Dan Byington, James Cannon, Joe Chitwood, Kyle Daggett, Jack Doran, Greg Hultz, Crystal Jenkins, Wes Massengill, and Daniel Werneth to work in its facility.

(e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful layoffs, discharges, employee evaluations, and attendance policy, and within 3 days thereafter notify the affected employees in writing that this has been done and that the layoffs, discharges, employee evaluations, and attendance policy will not be used against them in any way.

(f) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its facility in Quincy, Illinois, copies of the attached notice marked "Appendix."[20] Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 13, 1997.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[20] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT coercively interrogate employees about their union activities, sympathies, or the union activities of other employees.

WE WILL NOT threaten employees with discharge, loss of jobs, physical violence, or unspecified reprisals because of the employees' union activities.

WE WILL NOT threaten employees with plant closure or plant relocation because of their union activities.

WE WILL NOT create the impression that employees' union activities are under surveillance or engage in surveillance of employees' union activities.

WE WILL NOT tell employees to find another job if they support the Union or tell employees that they must obtain permission from management to engage in union activities.

WE WILL NOT circulate or assist in obtaining signatures on antiunion petitions.

WE WILL NOT maintain rules that prohibit solicitation by employees on nonworktime or prohibit distribution of literature by employees on nonworktime or in nonworkareas of our facility.

WE WILL NOT discharge, lay off, or reassign employees because of the employees' union activities.

WE WILL NOT grant employees pay raises in order to discourage union activities.

WE WILL NOT conduct new employee evaluations or adopt a new attendance policy in order to unlawfully discharge and lay off employees.

WE WILL NOT hire new permanent employees in order to unlawfully discharge or lay off other employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Tom Boone, Owen Brown, Gary Chapman, James Ende, James Gallaher, Marty McClauhen, James Payne, Jerry Schieferdecker, Brandon Schroder, Wayne Steffen, Dennis Tarpein, Roger Willis, John Boaerson, Robert Booher, Leonard Brooks, Ed Fruit, Jeremy Fruit, Sam Hutton, John Jacobs, Tom Killday, Tyson Mauck, Kevin McAffee, and Pierre Parrish full reinstatement to their former jobs or, if these jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make whole Tom Boone, Owen Brown, Gary Chapman, James Ende, James Gallaher, Marty McClauhen, James Payne, Jerry Schieferdecker, Brandon Schroder, Wayne Steffen, Dennis Tarpein, Roger Willis, John Boaerson, Robert Booher, Leonard Brooks, Ed Fruit, Jeremy Fruit, Sam Hutton, John Jacobs, Tom Killday, Tyson Mauck, Kevin McAffee, and Pierre Parrish for any loss of earnings and other benefits resulting from their layoff or discharge, less any net interim earnings, plus interest.

WE WILL make whole Quentin Brace, Dan Byington, James Cannon, Joe Chitwood, Kyle Daggett, Jack Doran, Greg Hultz, Crystal Jenkins, Wes Massengill, and Daniel Werneth, for any loss of earnings and other benefits resulting from their layoff or discharge, less any net interim earnings, plus interest, provided, however, that the termination dates of their respective backpay periods shall be determined in compliance proceedings.

WE WILL notify Snelling Personnel Services that we have no objection to Snelling Personnel Services' referring Quentin Brace, Dan Byington, James Cannon, Joe Chitwood, Kyle Daggett, Jack Doran, Greg Hultz, Crystal Jenkins, Wes Massengill, and Daniel Werneth to work in our facility.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful layoffs, discharges, employee evaluations, and attendance policy, and WE WILL, within 3 days thereafter, notify the affected employees in writing that we have done so and that we will not use the layoffs, discharges, employee evaluations, and attendance policy against them in any way.

HUCK STORE FIXTURE COMPANY

Christal J. Gulick, Esq., for the General Counsel.
John T. Gazzoli Jr., Esq. (Lewis, Rice & Fingers, L.C.), of St. Louis, Missouri, for the Respondent.
William McCleary Jr., Esq. (Kamp, Roberts & Mitchell), of Quincy, Illinois, for the Respondent.

Gerald Kretmar, Esq. (Appleton, Kretmar & Beatty), of St. Louis, Missouri, for the Charging Party.

DECISION

STATEMENT OF THE CASE

KARL H. BUSCHMANN, Administrative Law Judge. This case was tried in Quincy, Illinois, on June 17–20, and on July 7 and 8, 1997. On a charge filed by the Mid-Central Illinois District Council of Carpenters (the Union) on March 12, as amended on April 30, 1997, the General Counsel issued a complaint against the Huck Store Fixture Company charging it with violations of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). More specifically, the complaint alleges that the Respondent committed numerous independent acts of 8(a)(1) misconduct, such as coercive interrogations of employees, threatening employees with plant closure, discharge, and unspecified reprisals, creating the impression of surveillance, and circulating and assisting in obtaining signatures on an anti-union petition. The Company also stands accused of 8(a)(3) violations, devising a new attendance policy and new evaluations for employees and discharging and laying off numerous employees because of their union activity.

The Respondent's answer admits the jurisdictional aspects of the complaint, as well as the supervisory hierarchy consisting of Dennis Michael Prock, president; Gene Soebbing, vice president for administration; Ronald J. Hamann, vice president of production; Kent A Smith, production coordinator; as well as Supervisors Jeffrey Gibbs, Steve Lockett, Paul Lowe, Ronald Mock, Dave Schnelbacher, Roger J. Trimpe, and James E. Winking. However, the Respondent's answer denied the commission of any unfair labor practices.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent,[1] I make the following

FINDINGS OF FACT

I. JURISDICTION

Huck Store Fixture Company, an Illinois corporation located in Quincy, Illinois, is engaged in the manufacture and nonretail sale of store display fixtures and related products. With sales to and purchases from points outside the State valued in excess of $50,000, the Company is admittedly an employer within the meaning of Section 2(2), (6), and (7) of the Act.

The Union is admittedly a labor organization within the meaning of Section 2(5) of the Act.

II. BACKGROUND

Prior to November 1995, the Respondent's facility was owned by K-Mart Corporation and known as Huck Fixture Company. It employed approximately 150 to 200 employees whose production and maintenance employees were represented by the Union. K-Mart's decision to close the facility prompted Dennis Prock to purchase the Company on November 1, 1995.

Prior to the actual purchase of the facility, Prock had contacted the Union. The parties met several times in September, but an effort to reach an agreement failed. The Union's effort to resume negotiations in October and thereafter remained unsuccessful.

When the Company under Prock's control began operations in November 1995, it hired many of the employees who had been employed by the predecessor company, including carpenters, finishers, and laborers. In January 1996, the Company experienced a downturn in orders which lasted about 2 months. In order to reduce production, Prock decided to cut the hours of all employees rather than laying off any employees.

In January 1996, the Respondent engaged Snelling Personnel Services in order to provide the Company with temporary employees. The agreement included a proviso that the Respondent could hire a Snelling employee after he or she had worked for 300 hours. Snelling referred four employees in January 1996 and another four in April 1996. The Respondent also hired employees directly in 1996 and 1997, reaching a complement of about 200 production and maintenance employees. In December 1996, the Company hired a number of Snelling employees who had worked for the Respondent more than 300 hours.

In mid-January 1997, Prock assembled his employees, including supervisors and informed them as follows (Tr. 117, 1002):

> He was telling us that our, the work for the year was, outlook was. . . . The workload was well covered for the year of '97. That they were working, looked like they were going to get orders from fourteen new Borders stores and that they were working with Phillips 66 and that the outlook was good and there wasn't much to worry about. And that the business had built up quicker than he had anticipated.

On January 20, 1997, the Union held its first meeting with interested employees. Employee Cecil Wayne Steffen, who initially had been employed by Snelling and then transferred as a Huck employee in December 1996, contacted the Union on January 1, 1997. The Union's business representative, Roger Schoenekase, advised Steffen to solicit other employees for a union meeting to be held on January 20. A second meeting was held on January 30, 1997. During the third meeting on February 6, 1997, the attending employees signed union authorization cards and formed an organizing committee which included: Wayne Steffen, Jerry Schieferdecker, Roger Willis, Roger Stice, Owen Brown, Lenny Vandermaiden, and Rich Budde. Additional employees signed cards which they received from the members of the organizing committee.

Management became aware of the organizational efforts by its employees on or before February 13, 1997. On that day, Prock assembled his employees and spoke to them as recalled by employee Steffen (Tr. 54):

> Yes, he jumps up on a work bench and he had a Union authorization card in his right hand. And he was waving it over his head and he said, himself and management was aware of this and they strongly opposed and if anybody would like to

[1] The General Counsel's motion to strike the Respondent's letter of September 23, 1997, with enclosures is granted.

> ask for their cards back and tear them up they could have them.
>
> And that he'd treated us fairly and with open door policy and at that time he jumped off the bench and left the door.

Prock held several meetings with his management staff where, according to several of his supervisors' testimony he advised them not to threaten employees or to interrogate them about the Union. They were not to speak about the Union with the employees unless they were asked. Prock indicated to his management team that he was opposed to the Union. He asked them why the employees wanted to organize. One of the supervisors responded, saying that the employees resented Prock's large house and his expensive way of life while paying his employees low wages.

On February 20, 1997, four union representatives, including Shoenekase distributed union literature, including information about a union meeting to the employees at the Respondent's facility. Supervisor Jeffrey Gibbs approached the union officials. They provided him with the union literature. The union meeting on February 22, 1997, was attended by about 17 employees. Supervisors Gibbs and Steve Lockett went to the meeting but were denied access by the Union's business agent.

On February 26, 1997, employee Mark Smith, brother-in-law of Vice President Gene Soebing, initiated an antiunion petition. He and Supervisor Trimpe signed the petition and circulated it among the employees (GC Exh. 10). When employee James Gallaher received the petition, it already contained numerous signatures. He did not circulate the petition, but hid it in his toolbox and gave it to the Union. Smith circulated another antiunion petition among the employees after Gallaher had removed the first one. This petition was also signed by several supervisors (GC Exh. 11). Supervisor Ronald Mock signed the petition and passed it to the employees in his department. Winking received the petition and gave it to Prock.

The Respondent also engaged in numerous other antiunion activities many of which went beyond any legitimate bounds of conduct.

On February 20, 1997, the Respondent made a personnel decision to reduce the payroll. As a result, the Respondent discharged 11 employees on March 4, 1997, and laid off 10 of the Snelling employees on March 7, 1997, as well as 12 of its own employees on March 11, 1997. On March 10, 1997, the Respondent hired 10 Snelling employees into permanent positions. The Respondent also gave pay raises to a number of employees on March 17, 1997. Employees were selected for discharge or layoff on the basis of a point system which included an employee's absenteeism record, as well as evaluations prepared by supervisors.

In June 1997, the Respondent decided that production had to be increased and that employees had to work overtime in certain departments, and that additional employees had to be hired.

The General Counsel argues emphatically that the Respondent's layoffs and discharges were motivated by the Company's antiunion animus and were not justified by business reasons, and that the Respondent manipulated the evaluation and point systems so as to target union supporters. The Respondent's position is that it fairly selected employees for the reduction in its work force and that the Company experienced a slowdown in orders which made it unavoidable to reduce its work force. The Respondent also argues that all supervisors with the exception of Trimpe denied having made the unlawful statements attributed to them.

III. UNFAIR LABOR PRACTICES

A. The Independent 8(a)(1) Conduct

(A) As alleged in the complaint on February 13, 1997, Supervisor Trimpe admittedly spoke to several employees after Dennis Prock, president of the Company, had expressed to the assembled employee his unequivocal opposition to the Union. Trimpe approached five employees who were eating by their workstation and asked them what they thought about the Union. On the following day, February 14, Trimpe spoke with two employees about his own past experience with the Union. Trimpe walked by employee Jeremy Fruit's workstation and asked Fruit what he thought he could get from the Union. When Fruit replied that he would expect higher wages, Trimpe replied that he might get a 10-cent raise but that Fruit would not be better off because he would have to pay union dues.

Interrogating employees about the Union violates Section 8(a)(1) of the Act if the interrogation was coercive under the surrounding circumstances. Here, the coercion is not directly apparent, but the questioning occurred twice, once after the chief executive's strong expression of his opposition to the Union. The questions were bluntly directed at the employees' union activity rather than in the context of a casual conversation. Under these circumstances, I find such conduct sufficiently coercive so as to violate Section 8(a)(1) of the Act.

(B) On February 14, 1997, Supervisor James Winking, approached employee Jerry Schieferdecker at his workbench. Initially speaking about baseball, Winking spoke about the Union. Schieferdecker asked if he wanted to speak seriously or merely "chit chat." Winking said that he was seriously interested what the employees thought of the Union. Schieferdecker responded that it was time something was done about the employees' pay. Winking responded that if confronted with the Union, the Company would close the doors and leave the area. Ten or 15 minutes later, Winking returned and inquired if Schieferdecker had heard anything about any actual organizing by the employees. Winking added that it was just too early for the employees to organize.

In his testimony, Winking denied that he threatened this employee with plant closure. However, I did not credit Winking's testimony in this regard, based on my observation of his demeanor and his inconsistent testimony. For example, he expressed his desire to join the Union. Yet he had already signed a petition opposing it. Under these circumstances, the record supports the allegations in the complaint that Winking coercively interrogated the employee and unlawfully threatened him with plant closure. The questions, accompanied by threats, obviously create a coercive atmosphere in violation of Section 8(a)(1) of the Act.

(C) Winking also spoke with employee James Gallaher. On February 19, 1997, Winking told Gallaher that Prock would move the plant elsewhere if the employees were to organize a union. Again, I credit Gallaher's testimony rather than Wink-

ing's denial of the conversation. A statement that the plant would be moved or relocated because of the employees' union activity has long been considered a violation of Section 8(a)(1) of the Act unless the remark was based on objective facts or probable consequences beyond management's control. Winking made the statements without any basis of such facts. The allegation in the complaint is accordingly substantiated by the record.

(D) On February 17, 1997, Thomas Boone, an employee assigned to Supervisor Ronald Mock's department, had a conversation with his supervisor. Mock did not deny in his testimony that the conversation occurred. Boone testified credibly that Mock asked him at his workstation whether he had attended the last union meeting. Boone answered that he did. Mock then inquired how many people were present at the meeting. Boone replied six or seven. Mock continued asking questions about the Union, wanting to know who was behind the organizing effort. Boone replied that he could find out by attending the union meetings. Mock then asked whether Richard Buddy or Roger Willis were organizing the Union. Boone refused to answer the question and the conversation ended.

Mock's series of questions about Boone's and the other employee's union activities were coercive, particularly in the light of Mock's persistent manner of interrogation.

Moreover, the inquires about the union activities of the two specific employees constitutes a form of surveillance. Neither employee was known as an open union supporter. Nevertheless, Mock's questions about the union activities of two union organizers shows that the Company knew about their activity, giving rise to a presumption that the employees' union activities were under surveillance. This conduct and the coercive interrogation violate Section 8(a)(1) of the Act.

(E) A similar scenario occurred on February 21, 1997, when Supervisor Trimpe admittedly spoke with employees Jason Mooneyham and Jeremy Fruit. Trimpe asked them if they were going to attend the next scheduled union meeting. Fruit said that he did not know. Trimpe then said that they better not go because he would recognize their car. If he drove by the meeting place and saw their car he would have to fire them. Fruit replied that it sounded illegal to him. Trimpe stated that Fruit could not be fired for his union activity but that he could be fired for his performance on the job.

Coupled with threats of discharge, Trimpe's questions were coercive. Moreover, Trimpe conveyed the impression that he would recognize the employees' cars at the union meeting. This message has the tendency to discourage these employees from attending union meetings. Accordingly, not only was the interrogation coercive and violative of the Act, Trimpe's threat of discharge and the impression he created that employees' attendance at union meetings were under surveillance also constitute 8(a)(1) violations, as alleged in the complaint.

(F) On February 22, 1997, the Union held an employee meeting at its union hall. Approximately 17 employees attended the meeting. The record shows that Supervisors Jeffrey Gibbs and Steve Lockett went to the union hall and tried to gain admission to the union meeting. Gibbs had earlier obtained a written notice of the meeting which the Union had passed out to the Respondent's employees. Gibbs had approached Schoenekase and requested the flyer addressed to "Huck Employees." Because he, as a supervisor, is considered a member of Respondent's management, he was not admitted to the meeting, nor were supervisors invited. Appearing at a union meeting and attempting to gain entry is considered unlawful surveillance of employees' union activity because employees would be reluctant to attend such a meeting knowing that they would be seen by management. The Respondent thereby violated Section 8(a)(1) of the Act.

(G) Supervisor Paul Lowe initiated a conversation on February 25, 1997, at about 12:15 with employee Richard Budde. In a confrontational manner, he inquired why Budde was trying to organize the Union. Budde testified that he stood there and asked what Lowe was talking about. Lowe said that he [Budde] "knew what in the hell [Lowe] was talking about, that [Budde] was sneaking around under the table, trying to get cards signed and that if [he] was a real man, [he] would stand up and talk to everyone and not just one at a time" (Tr. 1089). Lowe also asked whether Budde did not feel guilty about the possibility that employees would loose their jobs for what he was doing and added that employees could lose their jobs, their livelihood and their ability to support their families because of Budde. Lowe finally said that if Buddy didn't like working there, that he "should get the hell out, actually quit, before" he cost everybody their jobs.

This conversation, the substance of which was not contradicted, violated Section 8(a)(1) of the Act in several respects as alleged in the complaint. First, Lowe threatened the employee with the loss of jobs because of his union activity; second, Lowe's observation about the hidden activity to obtain signatures on union cards created the impression of unlawful surveillance; third his inquiry occurred under clearly coercive circumstances because of Lowe's aggressive attitude and his threats. Lastly, the remark that Budde should look for another job, because of the union activity, is clearly coercive.

(H) On February 26, 1997, Supervisor Trimpe admittedly informed Mark Smith, an employee, that he had to obtain the permission of Gene Soebbing to circulate an antiunion petition. Requiring an employee to obtain permission from management to engage in a union activity, albeit against the Union, is unlawful. Accordingly, Trimpe's statement violated Section 8(a)(1) of the Act.

(I) Smith circulated the antiunion petition among the employees for their signatures (GC Exh. 10). Trimpe took the petition, signed it, and then proceeded to pass it around to about eight employees in his department urging them to sign the petition. Trimpe not only urged employees to sign, but he also threatened them with discharge if they refused to sign the petition. He ultimately handed the signed document to David Schnelbacker, the shipping department supervisor.

The Respondent's conduct in this regard violated Section 8(a)(1) in several respects, first a supervisor's solicitation of an antiunion drive among his subordinates amounts to unlawful interrogation because employees are required to disclose their reaction to the Union. Secondly the threat of discharge in connection with the antiunion petition as well as a supervisor's participation in its circulation constitute unlawful interference with the employees' Section 7 rights.

(J, K.) During the middle of the day, Supervisor Jeffrey Gibbs contacted Kent Smith, coordinator of production, to inform him that the petition had disappeared. They informed, Gene Soebbing of the petition's disappearance. Soebbing went to Supervisor Ronald Mock's department where they discovered that the petition had surfaced. Supervisor James Winking who had found the petition promptly signed it in front of the employees. He admitted during his testimony that he kept an eye on the petition, but that it disappeared again. Employee James Gallaher had taken it and placed it in his toolbox. Winking confronted Gallaher ordering him to produce it. But Gallaher refused. Smith promptly prepared a second antiunion petition (GC Exh. 11). Winking assisted in the circulation of the second petition, and handed it to Mock for his signature. Mock passed the petition around among the employees in his department.

On the following day, February 27, Smith took the second petition and handed it to Soebbing who in turn placed it on Prock's desk.

According to the complaint, the following management officials engaged in unlawful interrogation: Soebbing, Smith, Winking, Mock, and Gibbs. They also stand accused of circulating the petition and obtaining signatures on an antiunion petition. When the supervisors put the employees on the spot by circulating the petition to them, management was able to observe who among the employees favored the Union and who was willing to sign the document. This form of conduct was obviously coercive and amounted to unlawful interrogation. It is also clear that supervision in aiding and abetting the circulation of an antiunion petition violates Section 8(a)(1) of the Act. Finally, Winking by keeping an eye on the petition, observing its circulation and its subsequent disappearance as Gallaher placed the petition into his toolbox, his stern questioning of Gallaher about it and his request that the petition be returned, constitute unlawful surveillance and coercive interrogation in violation of Section 8(a)(1).

(L) A conversation on February 26 between Winking and employee Carl Steffen concerning the Union was alleged as a violation of Section 8(a)(1). The record shows that Winking approached Steffen and spoke initially about a basketball game. Winking then inquired about the Union. Steffen responded that he was interested in anyone who could help improve his pay and benefits. Winking said that he lost his job with the predecessor company, because of the Union, and that he would do whatever it took to keep his job. Winking suggested that Steffen speak to someone who could counsel him better like his father-in-law. When Steffen replied that his father-in-law, an IBEW representative, had just organized his workplace, Winking abruptly left.

Winking violated Section 8(a)(1) by threatening the employee with unspecified reprisals, when he threatened to do anything to keep the Union out. In this context the interrogation was coercive and also in violation of the Act.

(M) Supervisor Trimpe had a confrontation with Gallaher on about February 28 or 29, 1997, in the presence of two other employees near the coffee machine. Trimpe looked at Gallaher and speaking in a loud voice said: "What do you boys think about this Union shit?" (Tr. 570.) The employees did not respond and Trimpe continued saying, "I think we ought to take you boys out who signed union cards, and kick your asses."

Trimpe's conduct amounted to a threat of physical violence and coercive interrogation in violation of Section 8(a)(1).

(N) The Huck Store Fixture Company Employee Handbook provides in pertinent part:

> No one may distribute literature or post notices on company premises without written permission from management. All request for such activities will be in accordance with these standards.

The policy provides further that employees are subject to discipline including discharge for violations of the policy. The policy is presumptively invalid as it prohibits the solicitation by employees on their own time. *Our Way, Inc.*, 268 NLRB 394 (1983). The Respondent has not shown that the policy was either not enforced or provided for exceptions to the blanket prohibition. Accordingly, it is clear that the Company's maintenance of such a policy violates Section 8(a)(1) of the Act.

IV. LAYOFFS AND DISCHARGES

The complaint alleges that the Company violated Section 8(a)(1) and (3) of the Act when on March 4, 1997, it discharged 11 employees based on an attendance policy and job evaluations which were applied retroactively because the employees engaged in union activities. On March 7, 1997, the Company laid off 10 employees and on March 11, 12 more employees were laid off. Yet on March 10, 1997, 10 employees who had held temporary positions with Snelling were converted into permanent employees. These personnel actions occurred, according to the General Counsel, not for legitimate business reasons, but for reasons relating to the Union.

The Respondent argues that the Respondent under the leadership of Dennis Prock resurrected a failed company through his investments and that he was encouraged by local civic leaders to reopen that facility. The Respondent grew substantially in a relatively short time. The Company hired a substantial number of employees, including supervisors from the predecessor company. In mid-January 1997, Prock informed the employees that the outlook for the business was excellent and that it exceeded his expectations. He explained that the current goal was to build up the inventory in order to avoid overtime schedules which the Company had experienced in the prior year.

The Respondent further agrees that in spite of Prock's expressed optimism for the balance of 1997, inventories were building up and the Company increasingly resorted to the bank credit line in order to finance the operation. By March 1, 1997, so argues the Respondent, the Company had exhausted its credit line and was unable to finance further inventory or pay wages or raw material costs for new production without revenue from product deliveries. Moreover, according to the Respondent, Prock learned in early February, while visiting Phillips 66, a customer located in Oklahoma, that it had taken its store construction in house, resulting in a substantial reduction in business from that source. In addition, other customers like Dominos and Borders had not committed themselves to production and delivery schedules all of which convinced management on February 20, 1997, that it was overstaffed by 20 to 25

percent. The Company then proceeded to devise a formula designed to evaluate the work force and to retain the most qualified and productive employees. Among the various departments, the staffing in the cabinet rooms were particularly targeted for reductions. As a result employees were evaluated by their supervisors on the basis of a point system. Also included in the overall evaluation was the individual's absenteeism record which was assembled by senior management. The Respondent does not contest that the individuals named in the complaint were laid off or discharged.

Based on my analysis of the record, including the financial information, I find that the Respondent's personnel actions were motivated by union animus inconsistent with and unjustified by the state of Respondent's business. Under the Respondent's evaluation system a greater number of prominent union activists lost their jobs than the number of union supporters who remained employed, although several employees who had no history of union activity also became unemployed.

A logical discussion of the reasons for the reduction in the work force starts with Prock's announcement to the assembled employees in the second half of January that business looked good, that the Company was building inventory because it had commitments and was trying to reduce overtime work which was necessary in the prior year. Prock indicated that business had improved quicker than anticipated.

The Respondent's two largest and important customers Border and K-Mart, had already made commitments for products which were at least as large as those in 1996. In addition, the Respondent had two other customers, Domino's and Phillips 66, For example, in 1996, Respondent's business with Borders consisted of about $4 million worth of fixtures. This compared with orders in 1997 exceeding $5 million in fixtures. Similarly, Respondent's business with K-Mart which in 1996 amounted to almost $2.5 million was expected in January to grow to almost $3.4 million in 1997. Respondent expected to sell $500,000 worth of fixtures to Dominos. Another customer was Phillips 66 which in 1996 ordered almost $300,000 worth of products. On February 20, 1997, the Respondent anticipated to obtain orders from that customer worth about $480,000 in sales. This was the only reduction in anticipated business, because in January 1997, projected sales to Phillips 66 were $750,000 in orders. In addition, the Respondent was able to obtain a new customer, Highsmith, and expected $500,000 worth of new business. In sum, as pointed out by the General Counsel, the Respondent hoped to exceed its 1996 sales, by $1.5 million from Borders, $1 million from K-Mart, $500,000 from Domino's and Highsmith, and $180,000 from Phillips 66.

In the middle of February, the two senior executives, Prock and Soebbing, went out to visit their customers to obtain firmer commitments. Meetings on February 18 and 19 with officials of Dominos, K-Mart, and Borders substantiated Respondent's projections, although Borders had not formally committed itself. Only Phillips 66 was "the wild card" in this scenario because it had indicated a reduction in its orders, from a high of $750,000 to $480,000.

This scenario supports the optimism expressed by Prock in January 1997 to the employees that business looked good. The Respondent's meetings with its four major customers in February should have confirmed the optimism, because only one of the customers, Phillips 66, projected fewer orders than that expected, and that decrease—$270,000—was relatively small in comparison to the increase in orders from the other customers, constituting approximately 3 percent of the anticipated orders for 1997.

In his testimony, Prock conceded that his business outlook in early January and his business outlook in February 1997 had not changed significantly. For example, he testified as follows (Tr. 1315):

> I figured we had the core business of Phillips, Borders, K-Mart and Dominos to sustain the number of workers there plus going out and getting some business. I thought it looked—I know it looked a lot better and I made this comment—than it did a year earlier.
>
> . . . .
>
> So the difference between the first part of January and the end of February was not that significant but yet it was enough that we had to make some changes.

The Respondent, however, made not only "some changes" but drastic changes. Respondent's brief refers to "factual information currently available from the four major customers . . . determined that Respondent had 20–25 percent more production workers than required" (R. Br. p. 6). Accordingly 33 employees were discharged and laid off.

The Respondent's assertion with regard to the overstaffing is plainly inconsistent with the record evidence summarized above. Instead, the record shows that the personnel action was made, as alleged in the complaint, because of the employees' union activity.

The Respondent had solid information that the Union was attempting to organize the employees. It is conceded that on February 13, 1997, Prock learned that authorization cards were being circulated. The record shows that the Company was aware that a union meeting was held on February 12, 1997. Moreover, the Respondent admitted knowing these principal union activists who served on the organizing committee, Steffen, Willis, Schieferdecker, Budde, and Stice. Prock had obtained a union card and supervisors had obtained information from the employees through interrogations and surveillance.

The record shows the Respondent's strong and unequivocal antiunion animus. Prock announced to the employees, especially assembled to listen to his message that he was opposed to the Union. In addition, the Company's supervisory hierarchy committed numerous independent 8(a)(1) violations, such as threats of plant closure and the loss of jobs, coercive interrogations and surveillance of employees' union activity. Supervisors were involved in circulating antiunion petitions and so informed Prock. In short, the Respondent's antiunion animus was strong, clear, and unambiguous.

The timing of the massive discharges and layoffs suggests an unlawful motive. On February 13, Prock had knowledge of the union drive and within days Prock and Soebbing made the decision to reduce the work force by 20 percent. Management promptly devised a method to evaluate its employees. On March 4, 10, and 11, 1997, the Company effectuated its plan and discharged and laid off 33 employees. It is well recognized

that timing is an important factor in assessing motivation. The Board frequently infers that an asserted justification is a pretext and that an adverse personnel action was discriminatorily motivated. *Causley Pontaic v. NLRB*, 620 F.2d 122 (6th Cir. 1980).

On March 17, 1997, the Company granted wage increases to those employees who were earning less than $8. Approximately 33 employees were affected by the increase in pay.

If in reality the Respondent had faced a business slowdown, it could have done what was done in January of the prior year and reduced the working hours of all of its employees. At that time the Respondent was not faced with a union drive of its employees. Moreover, if the Respondent had actually been overstaffed in March, it would have been unnecessary to augment its employee complement by the same number of employees already in June 1997. Similarly, the Respondent would not have had to start a second shift so soon in the mill room and have the entire work force work overtime. And finally, the pay raises granted within days of the discharges and layoffs belies the argument that the Respondent's cash flow problem required a reduction in the payroll.

Clearly, the Respondent's justification for the discharges and layoffs in March were totally unjustified by business reasons. Instead, the Respondent was motivated by its union animus. I cannot credit Prock's or Soebbing's testimony that the decision for the layoffs and discharges were business related[2] and find that the business justification amounted to a pretext, and that the discharges and layoffs violated Section 8(a)(3) and (1) of the Act. The Respondent clearly failed to establish a business justification and any suggestion that these 33 individuals would have been laid off or discharged even in the absence of the employees' union activity is simply unconvincing and not supported by the record. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

The General Counsel argues not only that the adoption and enforcement of the evaluation policy was unlawful because it was used in response to the employees' union activity, but she also submits in great detail that the evaluation policy was designed to target individual union supporters. Evidence of this effort was Respondent's concentrated layoffs in the cabinet rooms where the majority of union supporters worked, and the selection of production workers rather than laborers. Lower scores were given to employees who did not sign the antiunion petition, and skilled employees were selected rather than the less skilled.

The records shows that the Respondent was advised by legal counsel in the planning of this job action. Once the decision was made to reduce the employee complement, the Respondent used a method which appeared lawful and nondiscriminatory on its face. Supervisors assigned a numerical score to each employee, based on five categories, attitude, work habit, quality of work, absenteeism, and knowledge (GC Exh. 3). In addition, the Respondent devised an attendance policy and a formula designed to evaluate the employees' attendance. The record shows that some union supporters lost their jobs pursuant to the policy and some did not. Similarly, some employees who did not support the union lost their jobs. Most of the employees laid off on March 11 had signed union cards and half of the ones discharged March 4 had signed union cards. For example, employees Brooks, William Fruit, and Jeremy Fruit, Hutton, and Parrish were discharged. The General Counsel may be correct that the evaluation system was set up in such a way so as to include as many union supporters as possible. Why for example, did the process include evaluations for the Snelling temporary employees. That relationship could simply have been canceled in order to save the jobs of as many of Respondent's employees as possible. The Respondent counters by stating that it wanted to retain the most productive employees. The record also shows that relatively more skilled employees were laid off, which included many of the union supporters. Known union supporters who were laid off were Willis, Steffen, Brown, Schieferdecker, and Gallaher. The evaluation process lent itself to a subjective appraisal of each employee, which could have been used to the disadvantage of union supporters. These and other arguments tend to support the General Counsel's theory, although I believe that the evaluation policy was not discriminatory on its face and not unlawful per se.

However, the unlawfulness of Respondent's entire job action of discharges and layoffs is well supported by the record. The Respondent's effort to target union supporters through the evaluation process substantiates the finding of the 8(a)(3) and (1) violations.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) of the Act by each of the following acts and practices.

(a) Supervisor Trimpe coercively interrogating employees about their union activities on February 13, 21, 26, and 28, 1997;

(b) Trimpe threatening employees with discharge on February 21 and 26, and with physical violence on February 28, 1997, because the employees engaged in union activities.

(c) Trimpe creating the impression that the employees' union activities are under surveillance on February 21.

(d) Trimpe telling employees that they must obtain permission from the Respondent to engage in union activities.

(e) Supervisor Winking coercively interrogating employees about their union activities on February 14 and 26, 1997.

(f) Winking threatening employees with plant closure and relocation on February 14, with unspecified reprisals on February 26 and with physical violence on February 28, 1997, because the employees engaged in union activities.

(g) Supervisor Mock coercively interrogating employees on February 20 and 26, 1997, about their union activities.

(h) Mock creating the impression that employees' union activities were under surveillance on February 20, 1997.

[2] For the reasons stated in the General Counsel's detailed brief, I find unreliable and implausible the Respondent's lack of cash argument. Domino's negotiator, for example, offered to pay for the built up inventory in February 1997.

(I) Supervisors Gibbs and Lockett engaging in surveillance of employees' union activities.

(j) Supervisor Lowe coercively interrogating employees about their union activities on February 25, 1997, and creating the impression that union activities were under surveillance.

(k) Lowe threatening to discharge employees because of their union activities.

(l) Lowe telling an employee that he should find another job if he wanted to engage in union activities.

(m) Supervisors Soebbing, Smith, Winking, Mock, and Gibbs coercively interrogating employees about their union sympathies, by soliciting them to sign an antiunion petition and unlawfully circulating and assisting in obtaining signatures on an antiunion petition.

(n) Maintaining an overly broad solicitation policy which prohibits any solicitations on company property without prior approval by management.

4. The Respondent violated Section 8(a)(3) and (1) of the Act by its job actions and changes made on March 4, 7, 10, and 11, 1997, because of the employees' union activities, including discharging the following employees on March 4, 1997:

John Boaerson	John Jacobs
Robert Booher	Tom Killday
Leonard Brooks	Tyson Mauck
Ed Fruit	Kevin McAffee
Jeremy Fruit	Pierre Parrish
Sam Hutton	

and laying off the following employees on March 7

Quentin Brace	Jack Doran
Dan Byington	Greg Hultz
James Cannon	Crystal Jenkins
Joe Chitwood	Wes Massengill
Kyle Daggett	Daniel Werneth

March 11

Tom Boone	James Payne
Owen Brown	Jerry Schieferdecker
Gary Chapman	Brandon Schroder
James Ende	Wayne Steffen
James Gallaher	Dennis Tarpein
Marty McGlauchen	Roger Willis

6. The Respondent violated Section 8(a)(3) of the Act by granting wage increases to about 30 employees because of the employees' union activities.

7. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent discriminatorily discharged and laid off the above referenced employees, I shall recommend that the Respondent offer them immediate and full reinstatement to their former jobs or a substantially equivalent position without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings they may have suffered by reason of the discrimination against them. All backpay provided shall be computed with interest on a quarterly basis in the manner prescribed by the Board in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and with interest computed in the manner and amount prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

[Recommended Order omitted from publication.]